IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6319 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

R P PATEL

Appearance:

1. Special Civil Application No. 6319 of 2000

Mr. M.J. Shelat for MR ASHISH M DAGLI for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr.M.J. Shelat for Mr.J.J. Dagli for the petitioner corporation. Notice of rule issued by this Court has been served upon the respondent but the respondent has not appeared before this Court either in person or through any advocate and, therefore, the matter has been taken up for final hearing in absence of the respondent herein.

By way of this petition, the petitioner has challenged award made by the Industrial Tribunal (Gujarat) at Nadiad in Reference (ITN) No. 623 of 1998 (Old No. 211 of 1997) dated 28th September, 1999 wherein the tribunal has modified the order of punishment from stoppage of increments of the workman concerned for a period of three years to one year with cumulative effect.

Learned advocate Mr.Shelat appearing for the petitioner has submitted that the tribunal has come to the conclusion that the respondent, while working as a conductor, has issued short ticket of Rs.3.00 and, therefore, charge levelled against the respondent was found to be proved and yet the tribunal has interfered with the order of punishment for which the tribunal has no power or jurisdiction while exercising the powers under section 11-A of the Industrial Disputes Act,1947 and, therefore, the award in question made by the tribunal is illegal, erroneous and bad in law and, therefore, requires to be quashed and set aside.

I have perused the award in question. I have also considered the submissions made by Mr. Shelat, learned advocate for the petitioner. It is alleged against the workman concerned that while he was on duty as a conductor in a bus on 5.10.1995, at that time, his bus was checked by the checking staff of the petitioner corporation and it was found that from two passengers of one group travelling from Balasinor to Anand, by recovering an amount of Rs.22.00 at the rate of Rs.11.00 per ticket, issued the ticket of Rs.19.00 and, thus, ticket to the extent of Rs.3.00 was issued in short. Similarly, one passenger was going from Balasinor to Dakor and instead of making punching for down 1 to 7, has made the punch for up-down. It was alleged that the statement of the said passenger was recorded before the conductor concerned. COnductor on duty has refused to give statement on the spot. Ultimately, on the basis of such charges, departmental inquiry was held against the workman concerned and after completion of such departmental inquiry, punishment of stoppage of three increments with future effect was imposed upon the workman concerned which order of punishment was challenged by the workman concerned before the tribunal wherein the tribunal in exercise of the powers under section 11-A of the Industrial Disputes Act, 1947 has set aside the order of punishment of three annual increments with cumulative effect and ordered to stop one increment of the workman concerned with cumulative effect under the award in question. Said award has been challenged by the petitioner corporation before this court by way of this

petition under Article 226/227 of the Constitution of India.

I have perused the award in question as well as the submissions made by Mr. Shelat for the petitioner. Before the tribunal, statement of claim was filed by the respondent and the written statement thereto was also filed by the petitioner corporation and necessary documents of departmental inquiry were also produced before the tribunal. The tribunal, after considering the evidence on record, has come to the conclusion that the defence raised for issuance of short ticket of Rs.3.00 is not believable and has observed that if the bus would not have been checked, then, the respondent workman would have an opportunity to misappropriate the amount of Rs.3/-. The tribunal has considered one aspect that at the time of checking way bill was closed and, therefore, question of reissue of the ticket was out of question. The tribunal has also considered one more aspect that the punishment of stoppage of three annual increments with recurring effect, looking to the misconduct in question, is harsh and unjustified and, therefore, the tribunal has considered the length of service and has passed the award in question. No past record of the workman concerned was produced before the tribunal. Considering the evidence on record, the tribunal has come to the conclusion that the respondent is not having the bad past record and the misconduct in question has been considered to be the first incident and, therefore, the tribunal has modified the order of punishment in exercise of the powers under section 11-A of the Industrial Disputes Act, 1947 and effect has been given from 1st November, 1999.

During the course of hearing, learned advocate Mr. Shelat has submitted that the tribunal has committed an error in exercising powers under section 11-A of the Act in modifying the order of punishment. According to him, in case other than dismissal, discharge and termination, such discretionary powers cannot be exercised and since it was not a case of dismissal, discharge or termination of service, the tribunal is not justified in exercising such discretion in favour of the respondent workman. For appreciating this contention raised by Mr. Shelat, it is necessary to reproduce section 11-A of the Industrial Disputes Act, 1947 which reads as under:

"11-A. Powers of the Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.-

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court,Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such order relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

Provided that in any proceeding under this section, the Labour Court, Tribunal or National Tribunal as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

The contention raised by Mr. Shelat has also been raised earlier before the Division Bench of this Court in case of GSRTC versus Prabhashankar K. Acharya reported in 1992 (2) GLH 354 and the contention that the labour court or the industrial tribunal has no power to interfere with the order of punishment other than dismissal,discharge or termination in exercise of the powers under section 11-A of the Industrial Disputes Act, 1947 has been negatived by the Division Bench of this Court in aforesaid decision. Relevant paragraph 19 and 20 of the said decision are reproduced as under:

"19. The submission of Shri Shelat, learned advocate for the management that the tribunal has no jurisdiction at all to interfere with the order in inquiry in which the punishment other than that of the discharge or dismissal is imposed, cannot be accepted. Shri Shelat submits that provisions of section 11A, Industrial Disputes Act only empower the Tribunal to interfere with the order in which the punishment of discharge or dismissal is imposed and in no other order and, therefore, the tribunal cannot interfere with any other order in which the other punishment is imposed. There is no provision under the Act prohibiting the tribunal in exercising the jurisdiction except in the case of punishment of discharge or dismissal. We have

extensively discussed the provisions of sections 7, 7A and 15, and the Schedule, and it is evident that the Tribunal has jurisdiction even to interfere with the order imposing the punishment other than that of discharge or dismissal. Even prior to the incorporation of section 11A, Industrial Disputes Act, the jurisdiction of the Tribunal to interfere with the order of punishment is recognized and accepted by the courts, of course, that is only under certain circumstances as discussed above. The acceptance of the submission would lead to absurd results and even in case of punishment other than that of discharge or dismissal which may lead to victimization, the tribunal will not be in a position to interfere and give proper justice to the workman.

20. The submission by the learned Advocates for the management that even if it is accepted that the tribunal has jurisdiction to interfere in the nature and quantum of the punishment, it cannot substitute the nature or the quantum of the punishment except in the case of discharge or dismissal falling within the purview of section 11A, Industrial Disputes Act and should remand the matter back to the Management for taking proper decision for the nature and the quantum of punishment. The restricted jurisdiction is only to the extent of interference in the finding and the order of punishment. But once the circumstances and the reasons exist for interfering with the finding of punishment, the jurisdiction of the tribunal cannot be restricted to remanding the matter to the management and not exercising the power to substitute the nature or quantum of punishment. In some cases, that may also lead to absurd results as the management may impose same punishment and the workman will be compelled to approach the tribunal again and that will cause much hardship and inconvenience to the workman. In absence of any such provision, we think there is no reason to restrict the jurisdiction of the tribunal as submitted by the learned advocates for the management. "

In case of Municipal Corporation, Baroda versus Sanatkumar D. Brahmbhatt reported in 1992 (1) GLR, page 432, same question was raised by the Management and has been answered by the Court. Relevant observations made

by the Court in para 3 and 4 of the decision are reproduced as under:

3. In order to appreciate the grievance of the petitioner, a few relevant facts may be noted. The respondent was working at the relevant time as an octroi clerk. The allegation against him was that he had allowed a truck to pass without collecting octroi. On account of this incident, three charges were levelled against him. In the departmental inquiry, it was found that out of three charges, the first charge was mostly proved, the second charge was not wholly proved but was found to be negligent and the third charge was not proved. However, ultimately, punishment by way of stoppage of three yearly increments with future effect was imposed by the disciplinary authority. The respondent raised an industrial dispute to the effect whether punishment of stoppage of three yearly increments should be vacated and whether deducted amount should be refunded to the workman or not. This dispute was adjudicated upon by the Industrial Tribunal which reached the conclusion that looking to the charges which were proved, punishment of stoppage of three yearly increments with future effect would be too harsh and consequently punishment of stoppage of one yearly increment without future effect was substituted.

4. The learned advocate for the petitioner was right when he contended that on the express language of section 11A of the Act, such controversy could not be covered by the said provision as such provision relates to only discharge or dismissal of a workman. However, on the facts of the present case, the very dispute which is referred to the Industrial Tribunal for adjudication centres round the legality and propriety of the imposition of punishment of stoppage of three yearly increments with future effect. Once that dispute is referred for adjudication, the Industrial Tribunal in exercise of its power under section 11A was bound to adjudicate upon that dispute and pronounce upon it. The term 'industrial dispute' is defined by section 2(k) to mean any dispute or difference between the employers and employees or between employers and workman. It cannot be gainsaid that there is difference or dispute between the employer and employee in connection with the

> punishment imposed on the workman. Therefore, de hors sec. 11A, the legality and propriety of the punishment had to be examined by the industrial tribunal while adjudicating this very dispute which was referred for adjudication. Consequently when the industrial tribunal considered the gravity of the punishment in the light of the charges having been held proved, it cannot be said that it was exercising jurisdiction not vested in it. IN fact, it was its obligation to adjudicate this very dispute which was referred for adjudication."

Therefore, in view of the observations made by this Court in the aforesaid decisions as regards the discretion of the labour court and the tribunals for exercise of the powers under section 11-A of the Industrial Disputes Act,1947, the contention raised by Mr. Shelat that the tribunal has erred in exercising the powers under section 11-A of the Industrial Disputes Act,1947 has no substance and is rejected accordingly.

Except that, learned advocate Mr.Shelat has submitted that the tribunal has also committed an error in passing the said award. He has however not been able to point out any infirmity in the award in question. I have perused the award in question. The tribunal was right in coming to the conclusion that the misconduct has been found to be proved but considering the explanation of the respondent and also considering the length of service of the respondent workman as past record was not produced before the Tribunal, the tribunal has rightly come to the conclusion that the punishment of stoppage of three annual increments with cumulative effect is harsh and unjustified looking to the gravity of misconduct proved against the workman concerned. The tribunal, therefore, in exercise of the powers under section 11-A of the Act, has modified the order of punishment and in support of such conclusion, the tribunal has given cogent and convincing reasons. Therefore, according to my opinion, the award of the tribunal is legal and proper. Learned advocate Mr. Shelat has not been able to point out that the tribunal has committed any jurisdictional error and/or procedural irregularity in passing the award in question. Therefore, there is no substance in this petition and the same is required to be rejected.

For the reasons recorded hereinabove, this petition is is dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated with no order as to costs.

3.4.2002. (H.K.Rathod,J.)
Vyas